IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2593 of 2005
Date of Decision: 16.10.2007

Labh Singh and others ...Appellants

Versus

Dharam Pal and others ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri S.K. Singla, Advocate, for the appellants.

HEMANT GUPTA, J.

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the claim of the estate of Madho by way of natural succession was declined.

It was found that Madho has executed Will dated 24.9.1963 in favour of the defendants and thus, the plaintiffs are not entitled to succeed to the estate of Madho by way of natural succession. Madho, whose estate is in dispute died on 11.10.1969. The present suit for declaration claiming the estate of Madho was filed in the year 1999. The defendants relied upon the Will dated 24.9.1963 Exhibit D.1 and examined Darbara Singh, one of the attesting witnesses of the Will as DW1.

Learned counsel for the appellant has vehemently argued that the statement of DW1 Darbara Singh is totally unworthy of reliance as he does not remember at which place the Will was registered; where the same was registered or in which season the same was scribed. Therefore, the testimony of the sole witness could not form basis for dismissal of the suit. The learned first Appellate Court examined the said

aspect in a great detail. It has been found that DW1 Darbara Singh is of 85 years of age and has been examined after 41 years of the execution of the Will. The Courts have considered Exhibit D.2 certified copy of the application dated 22.10.1969 placed on record by the defendants to show that the legal representatives were brought on record in a pending Civil Suit on the basis of Will. Exhibit D.4 is the certified copy of the statement, which is part of Suit No. 279 dated 27.6.1967, wherein the legal representatives of Madho were brought on record on the basis of Will. It is, thus apparent that the Will dated 24.9.1963 was produced on the judicial record of the Civil Court on 22.10.1969 i.e. 11 days after the death of Madho. Thus, taking into consideration the entire circumstances and the subsequent conduct of the parties, the Courts below have returned a finding in respect of the due execution of the Will Exhibit D.1.

Such finding cannot be said to be suffering from any patent illegality or irregularity, which may give rise to any substantial question of law in the present regular second appeal. Hence, the present appeal is dismissed.

16-10-2007 (HEMANT GUPTA)
ds JUDGE